

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MM INDUSTRIAL MEMPHIS, LLC,

Plaintiff,

v.

MYRIAD ENTERTAINMENT AND RESORTS, INC.,

Defendant.

Civil Action No. 08-88

MOTION FOR DEFAULT JUDGMENT

COMES NOW Plaintiff, MM Industrial Memphis, LLC (“MM”), by and through its undersigned counsel, and respectfully requests that, in accordance with Federal Rule of Civil Procedure 55(b)(1) and District of Delaware Local Rule 77.2(4), the Clerk enter judgment by default against the Defendant Myriad Entertainment and Resorts, Inc. (“Myriad”). In support of this Motion, MM represents as follows:

BACKGROUND

1. Plaintiff MM is a Massachusetts limited liability company authorized to do business in Tennessee where it owns commercial real property.
2. Defendant Myriad is a corporation organized and existing under the laws of the State of Delaware.
3. On February 12, 2008, MM commenced this action seeking damages resulting from Myriad’s breach of a lease (the “Lease”) for certain commercial property located in Shelby

County, Tennessee. Also on February 12, 2008, a summons was issued to Myriad directing it to respond to the Complaint.

4. On February 13, 2008, MM served the summons along with the Complaint on Myriad's registered agent in accordance with Federal Rule of Civil Procedure 4. Accordingly, Myriad's answer to the Complaint was due twenty days thereafter, on or before March 4, 2008.

5. As of the date hereof, Myriad has not appeared, answered the Complaint or otherwise responded to this action as required under Federal Rule of Civil Procedure 12.

RELIEF REQUESTED

6. Federal Rule of Civil Procedure 55(b) (1) permits the Clerk to enter a default judgment for a sum certain against a defendant who has not appeared and who is neither a minor nor incompetent. The docket plainly reflects that Myriad, a corporation, has not appeared in this action. Therefore, this matter is ripe for entry of judgment under Rule 55.

7. As detailed in the Affidavit of Jan Mansel, attached hereto as Exhibit A, the monthly base rent due under the Lease was \$4,725.00 for each month of the 39 month term. Therefore, the total base rent due under the Lease is \$184,275.00.

8. In addition, Myriad, as tenant, was obligated to pay its proportional share of operating expenses and real property taxes. This amount was fixed by the Lease as \$1,496.13 per month for each of the 39 months of the term or a total of \$58,349.07

9. At the time of execution of the Lease, Myriad posted a security deposit of \$18,663.39, but did not pay any of its rent or proportional share of operating expenses and real property taxes due under the Lease. Accordingly, after giving effect to the setoff of the security

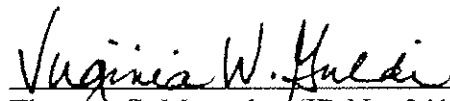
deposit, the balance due under the lease is \$223,960.68.

10. In addition, Rule 55 allows the entry of costs against the defaulting defendant.

WHEREFORE, MM requests that the clerk enter judgment by default against Myriad in the amount of \$223,960.68, plus costs.

Dated: May 7, 2008

Respectfully Submitted,



Thomas G. Macauley (ID No. 3411)

Virginia W. Guldi (ID No. 2792)

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- and -

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Attorneys for Plaintiff

EXHIBIT A

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AFFIDAVIT IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

NOW COMES the affiant, Jan Mansel, being duly sworn, states the following:

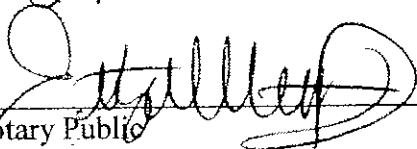
1. This affidavit is based upon my personal knowledge and competency to testify as to the matters set forth herein.
2. I am the Property Manager for MM Industrial Memphis, LLC ("MM"). I am familiar with the lease dated July 31, 2006 (the "Lease") between MM, as lessor, and defendant Myriad Entertainment and Resorts, Inc. ("Myriad"), as lessee. I have reviewed the Lease and the related account in connection with the preparation of this Affidavit.
3. Under the Lease, the monthly base rent due was \$4,725.00 for each month of the 39 month term. The total base rent due under the Lease was \$184,275.00.
4. In addition, Myriad, as tenant, was obligated to pay its proportional share of operating expenses and real property taxes. This amount was fixed by the Lease as \$1,496.13 per month for each of the 39 months of the lease term, for a total of \$58,349.07.
5. The total amount due under the Lease is \$242,624.07. No payments of rent or proportional share of operating expenses or real property taxes have been received from Myriad.

6. At the time of execution of the Lease, Myriad posted a security deposit of \$18,663.39. Accordingly, after giving effect to the setoff of the security deposit, the balance due under the Lease is \$223,960.68.



Jan Mansel

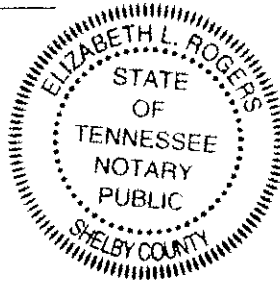
Sworn to and subscribed before me
This 14th day of April 2008



Notary Public

My commission expires on:

MY COMMISSION EXPIRES:
September 14, 2011



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Civil Action No. 08-88

DEFAULT JUDGMENT

Plaintiff, MM Industrial Memphis, LLC, having moved for entry of judgment by default and there being cause therefor; in accordance with Federal Rule of Civil Procedure 55(b)(1) and District of Delaware Local Rule 77.2(4), JUDGMENT BY DEFAULT is entered in favor of Plaintiff, MM Industrial Memphis, LLC and against Defendant Myriad Entertainment and Resorts, Inc., in the amount of \$223,960.68, plus costs.

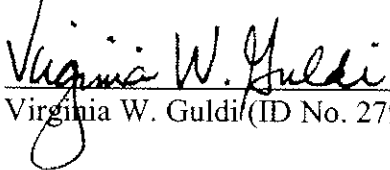
Clerk

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2008, I electronically filed "Motion for Default Judgment" with the Clerk of Court using CM/ECF.

I hereby further certify that on May 7, 2008, I caused a copy of the "Motion for Default Judgment" to be served on the following by regular mail first class postage prepaid on:

Myriad Entertainment and Resorts, Inc.
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808



Virginia W. Guldi (ID No. 2792)